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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE MAGISTRATE JACQUELINE SCOTT CORLEY

WAYMO, LLC,)
)
Plaintiff,)
)
vs.) No. C 17-00939 WHA (JSC)
)
UBER TECHNOLOGIES, LLC., OTTO)
TRUCKING, LLC, and OTTOMOTTO, LLC,)
) San Francisco, California
Defendants.) Monday
) September 18, 2017
) 1:00 p.m.

TRANSCRIPT OF PROCEEDINGS

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P R O C E E D I N G S

SEPTEMBER 18, 2017

1:32 P.M.

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THE COURT: Appearances, please.

MR. PERLSON: Hi. David Perlson from Quinn Emanuel.

Here is Charlie Verhoeven, Jeff Nardinelli, Jordan Jaffe and
Melissa Bailly.

THE COURT: Good afternoon.

MR. GONZALEZ: Good afternoon, your Honor. Arturo
Gonzalez, Karen Dunn.

I want to introduce you to Mr. Carmody from Susman Godfrey
here for Uber.

MR. CARMODY: Good afternoon, your Honor.

THE COURT: Welcome.

MR. PATCHEN: Good afternoon, your Honor. Jonathan
Patchen on behalf of non-party Mr. Ron.

THE COURT: Good afternoon.

MS. HYDE: Good afternoon, your Honor. Haynes Hyde
on behalf of co-defendant, Otto Trucking.

MR. BROWNSTEIN: David Brownstein on behalf of Colin
Sebern, your Honor.

MR. BARTLETT: Jason Bartlett on behalf of non-party
Don Burnette.

MR. CATE: Matthew Cate on behalf of the Special
Master.

1 **MR. EHRLICH:** Good afternoon. Miles Ehrlich on
2 behalf of Mr. Levandowski.

3 **THE COURT:** Okay. Good afternoon.

4 So I'm unavailable starting tomorrow, so I wanted to get
5 all our ducks in a row.

6 So let's start what's happening and then you can tell me,
7 Mr. Perlson, what's happening for the rest of the week.

8 **MR. PERLSON:** Well, your Honor, as you may have seen,
9 we filed a motion to continue the trial date, which the judge
10 has set for hearing on Wednesday morning.

11 **THE COURT:** But we're assuming today that the trial
12 is going forward.

13 **MR. PERLSON:** I understand.

14 **THE COURT:** Yes.

15 **MR. PERLSON:** This morning I went and I looked at the
16 documents from Stroz that have been made available for the
17 first time today. There are 425,000 documents from
18 Levandowski. Burnette is about 487,000. Lior Ron, 228,000.
19 Soren Juelsgaard 282,000. And Mr. Sebern has -- those weren't
20 made available yet. Apparently, there was some snafu with the
21 search term, but I'm told there are about 55,000 of those. And
22 there are several thousand other documents that have been
23 produced in the last few days.

24 You know, in the next couple days what we need to be doing
25 is reviewing these documents so that we can take depositions

1 that will actually be useful and be informed by them. I would
2 suggest that, you know, to the extent that we're going to be --
3 start talking about depositions now, with the directive that
4 you just gave, that it's really not practical for any of those
5 fact depositions to take place next week.

6 **THE COURT:** What about the MoFo depositions?

7 **MR. PERLSON:** These are the same materials, your
8 Honor, and we need to know --

9 **THE COURT:** How?

10 **MR. PERLSON:** Well, because -- well, I don't know how
11 much I can say.

12 **THE COURT:** Well, you have the due diligence report
13 and you now have Uber's privilege log. I mean, you have the
14 documents that were withheld and now produced, right? Those
15 were produced on Friday?

16 **MR. GONZALEZ:** Yes.

17 **MR. PERLSON:** Well, your Honor, we have got about
18 5,000 documents from Stroz. We've got to go through those.
19 Those have been communications between MoFo attorneys regarding
20 the facts underlying the due diligence report and what they
21 knew and what they didn't know about what was in these hundreds
22 of thousands of files that I've seen.

23 So in order to properly examine the witnesses from MoFo,
24 who were aware of the contents of these materials and they have
25 been for now, you know, months and months and months that we

1 just found out about today, we need to be able to know what's
2 in there.

3 **THE COURT:** Which materials?

4 **MR. PERLSON:** The over 1.5 million pages of documents
5 that Stroz just gave to us that were the subject of the report
6 that MoFo and everyone else on defendants has had for months
7 and months, which we're now just getting.

8 So we need to understand the full scope of everything
9 that's in there to properly examine these witnesses.

10 **THE COURT:** I think what we need to do is we
11 actually -- the MoFo ones, I think, we need to schedule and we
12 need to schedule them for next week.

13 If you find something later on -- because it seems to me
14 the most yield is what was on the privilege log that's now been
15 produced and the report itself and all the exhibits which you
16 have, right?

17 **MR. PERLSON:** Well, no. I mean, there's hundreds of
18 pages of the documents that they have provided in their
19 privilege that are redacted. So I don't even know what's in
20 all of that stuff.

21 **THE COURT:** Well, that was on their log before. They
22 said partially produced or not produced, all of that. I
23 understand that. I'm not deciding the motion to continue.

24 **MR. PERLSON:** I understand.

25 **THE COURT:** So if someone needs to be deposed and

1 then as other stuff is -- they have to be redeposed, I assume
2 you're willing to put them up again upon a showing.

3 **MR. GONZALEZ:** Upon a significant showing, your
4 Honor.

5 **THE COURT:** Well, I understand that. So I think what
6 I want you to do is I want you to schedule -- and MoFo, are
7 these people that you gave dates for?

8 **MR. GONZALEZ:** We did.

9 **THE COURT:** Okay.

10 **MR. GONZALEZ:** We've given them dates and they have
11 rejected them.

12 **THE COURT:** Okay. I want those scheduled for next
13 week, the week of the 25th.

14 **MR. GONZALEZ:** That's fine. We'll give them dates.
15 And if there is a date -- we'll give them dates for next week.

16 **MR. PERLSON:** Your Honor, another thing. I was
17 reminded -- thank you -- that one of the key issues here is
18 that MoFo itself has possessed, and we only briefly were able
19 to review it last week, 69,000 pages -- I'm sorry, 69,000
20 documents, many of which are -- well, I don't know if I can say
21 the substance of it, but highly relevant to the key fact of
22 what Uber knew and what -- and when they knew it and -- and
23 then, also, in relation to the issues of what MoFo knew and
24 when they knew it, contrary to allegations that -- or
25 representations that they had made in the case. And in order

1 to go through all of those things, it's going to take a
2 tremendous period of time.

3 So I think it's -- if we are going to go -- I understand
4 the directive to do it next week.

5 **THE COURT:** You have your hearing before Judge Alsup
6 on Wednesday, but in the meantime get it scheduled.

7 **MR. PERLSON:** I understand. I just want to say that
8 I think there is a high likelihood that they will need to be
9 taken again because of all these materials that need to be
10 reviewed.

11 **MR. GONZALEZ:** Just a couple of things briefly.

12 We made the MoFo materials available last Thursday after
13 we left this room. They sent one lawyer over, who spent a
14 couple hours reviewing and then said: I'll come back tomorrow.
15 He never came back. Nobody has come back to this moment. The
16 documents were there for them to look at.

17 If they are going to take my partner's deposition next
18 week, whatever they want to ask about those documents, they've
19 got to ask then. They can't take my partner's deposition next
20 week and then say: Oh, now we've got to take him again because
21 of these documents that they have had access to since Thursday.

22 **THE COURT:** Well, just keep track. Just keep track
23 of the time.

24 **MR. GONZALEZ:** Oh, I am.

25 **THE COURT:** All right? Everybody. Do whatever you

1 want to do. Make whatever record, but...

2 **MR. PERLSON:** And if you remember, your Honor, the
3 person he's talking about was Mr. Judah, who was going to his
4 wedding this weekend and so --

5 **THE COURT:** Hopefully, he got married.

6 **MR. PERLSON:** I'm not sure that -- you know, if he
7 represented that he was going to be there all day, they sure
8 knew that he wasn't going to be there all day.

9 But, you know, there is hundreds of thousands of documents
10 and, your Honor, we're going to work as hard as we can.

11 **THE COURT:** And hundreds of Quinn attorneys. I know
12 because I see the pro hac vices that are coming through left
13 and right.

14 In any event, okay. Just get those scheduled, MoFo, for
15 next week. All right?

16 **MR. GONZALEZ:** We'll do that.

17 **THE COURT:** It will be what it is. You'll have done
18 whatever you've done and everybody will -- it will be what it
19 will be and we'll see what will happen.

20 **MR. PERLSON:** Understood, your Honor.

21 **THE COURT:** All right. What else then?

22 **MR. GONZALEZ:** I have one other matter, your Honor,
23 because you're going to be gone for a week, just briefly.

24 Last week, a week ago today, document 1504, you granted a
25 Motion to Compel. We wanted a further response to Request For

1 Admission 43 and Interrogatory 29. That was the request that
2 asked them to admit that out of all these on-site inspections,
3 they found no evidence of misappropriation. And they denied
4 that and you ordered them to further respond.

5 It's been a week. They haven't responded and they haven't
6 given us a date when they are going to respond. I'm going to
7 ask that they respond by the end of day tomorrow, your Honor.

8 **THE COURT:** Do you have a date?

9 **MR. PERLSON:** We can do that.

10 **THE COURT:** Okay.

11 **MR. GONZALEZ:** Thank you.

12 **THE COURT:** Your wish is my command.

13 **MR. GONZALEZ:** Let me think of some other things
14 while we're at it, your Honor.

15 (Laughter.)

16 **THE COURT:** All right. Does anyone have an update on
17 how the review of the relativity database is going?

18 **MR. GONZALEZ:** I actually do want to make a comment
19 on that, because I think it's relevant.

20 If you recall, you ordered that it be ready for review by
21 9:00 a.m. Now, to their credit, the folks at Stroz and their
22 counsel worked all weekend to get it ready at 9:00 a.m. and we
23 were told that the plaintiffs were going to have six lawyers
24 there. So we had computers set up at 9:00 a.m. for six
25 lawyers. 9:00 a.m. came and they didn't show up. 9:30, they

1 didn't show up. 10:00 o'clock, and they didn't show up. The
2 defense lawyers were there to observe, but they weren't.

3 Judge Alsup issued his order at 10:23 saying: Folks,
4 don't assume this case is being continued and half an hour
5 later Mr. Perlson, by himself, shows up.

6 So they may now be reviewing these things, I don't know.
7 But I just want you to know that we busted our tails to do
8 exactly what you asked us to do and the six monitors were there
9 empty. We even have photos, which we can show you later.

10 **THE COURT:** I don't need them. Thank you.

11 **MR. GONZALEZ:** I know you don't. But I just wanted
12 to make that representation to you so you will know what's
13 going on here.

14 **MR. PERLSON:** Your Honor, we've had, perhaps, what we
15 just heard in the other courtroom about half-truths.

16 Well, let's talk about some of the other things that
17 happened. I showed up. I had planned to go there. I dropped
18 my kids off this morning and I -- and we got the order and I
19 tried to do some work and then I went over there, as I had
20 planned to do from the beginning. The suggestion that I went
21 over there because of his order is -- is a misrepresentation
22 that -- and I resent that.

23 Second of all, I got there, it took me a half an hour to
24 get on. They didn't have my name. They didn't -- there was no
25 registration for me at all. I had to sign in on Mr. Judah's

1 name --

2 **THE COURT:** Just tell me now. Are there six
3 people now --

4 **MR. PERLSON:** First of all, we never said there was
5 going to be six people at all particular times.

6 **THE COURT:** You asked for six terminals.

7 **MR. PERLSON:** Yeah. We said that that would be how
8 many available. When I left, there were four and I think there
9 were two more coming. Another thing that Mr. Gonzalez didn't
10 say.

11 So, you know, let's get these allegations correct and not
12 make allegations against me and our team personally when we
13 were working as hard as we possibly can for the hundreds of
14 thousands of documents that they had withheld for months and
15 months and months --

16 **THE COURT:** Okay. I think we're just going to stop.
17 I just don't want this to be for the press. It's fine. I just
18 want to see.

19 All right. So it's there for you to review now and you
20 have lawyers reviewing.

21 **MR. PERLSON:** Yes, your Honor.

22 **THE COURT:** That's my question. Okay. All right.

23 **THE REPORTER:** Counsel, your name please?

24 **MS. BLUNSCHI:** Melanie Blunschi, B-L-U-N-S-C-H-I, of
25 Latham for Stroz Friedberg.

1 I just wanted to clarify that we had everything up and
2 running. We had six accounts ready to go. There was a typo in
3 David Perlson's name. The other five worked. It took 15 to 20
4 minutes to get his working.

5 We actually asked repeatedly for who they were going to
6 send so we could get the accounts set up and did not get that
7 until last night.

8 So Mr. Perlson was online within a few minutes. He could
9 have been online instantaneously with another account. We're
10 very sorry for that inconvenience, but given the lengths that
11 we went through to get everything set up and screened and ready
12 to go, as a non-party at that, I resent the implication that
13 when he showed up two hours late and had an inconvenience
14 logging on, that that implies that Stroz was not diligent.

15 **MR. PERLSON:** That's not what I was saying at all.

16 **THE COURT:** There is no implication. There is no
17 inference whatsoever. It's great it was up and running. How
18 is that?

19 **MS. BLUNSCHI:** Thank you.

20 **THE COURT:** It's great that the lawyers are there
21 reviewing. So that's what I want to make sure.

22 Now, let's ask about -- so is there anything else with
23 respect to the relativity then? As far as you know, it's going
24 well? It's going.

25 **MS. BLUNSCHI:** We --

1 **MR. PERLSON:** It works --

2 **THE COURT:** Okay.

3 **MR. PERLSON:** -- to a degree, yes.

4 **THE COURT:** Okay. All right.

5 **MR. PERLSON:** You know, there will be issues, but
6 we'll deal with those as they come.

7 **THE COURT:** Okay.

8 **MR. PERLSON:** I don't know that we've had -- what's
9 the other one? Equip? I don't know that that's been made
10 available to us yet.

11 **THE COURT:** The Epic.

12 **MR. PERLSON:** Yeah.

13 **MS. BLUNSCHI:** Epic, that's through MoFo, not Stroz.

14 **MR. PERLSON:** No one has gotten -- as far as I know,
15 no one has made that available to us.

16 **THE COURT:** I understand. Okay. All right.

17 What about the Stroz depositions then, because we had
18 always talked about it being in two steps in any event. Why
19 shouldn't we get that first one taken of Mr. Friedberg?

20 **MR. PERLSON:** Well, I suppose we should set it up the
21 same way. We could take a deposition next week with the same
22 caveats that, you know, there is -- that there is hundreds of
23 thousands of documents that his people have looked through and
24 characterized in certain ways that, you know, we need to
25 evaluate.

1 **THE COURT:** All right. But that was my point; is
2 that it might help your evaluation to actually take his
3 deposition, since he's the one that governed the review in any
4 event.

5 And we had talked about it and I thought there was an
6 understanding that he would have to sit more than once. I
7 believe there was an objection that was made and I said: Take
8 it at MoFo.

9 **MS. BLUNSCHI:** Stroz would -- would object to
10 Mr. Friedberg's sitting twice.

11 We have talked to Quinn about whether there are particular
12 issues that would sort of expedite their review of the
13 documents that we could answer informally or if they could give
14 us guidance as to what the issues for a separate deposition
15 would be so that we could try to either avoid a double
16 deposition or --

17 **THE COURT:** I have to tell you, I'm just not that
18 concerned about Mr. Friedberg sitting for two depositions. I
19 think the burden -- given the burden that's been to the
20 company, given that his company's involvement in this whole
21 case is just not that great. So I understand that, but that's
22 just too bad. I think that just has to happen.

23 So I want you to take it early next week. Frankly, I
24 would take it this week because I think -- I'm not limiting you
25 to one and that it will help.

1 No one should bank on there being a continuance. So what
2 I'm trying to do at this moment is get you to prioritize and
3 make sure. And it seems to me, it's your case, that to take
4 his deposition sooner rather than later will help you figure
5 out of all those millions of documents out there, where you
6 want to spend your initial energy in any event.

7 So that would be my recommendation. It's the order of the
8 Court that he sit twice, if need be, and I'm assuming that
9 there very well may be a need.

10 **MS. BLUNSCHI:** And they would have to make some
11 showing to get the second one?

12 **THE COURT:** Yeah. It won't be that hard. It will be
13 like: Well, here are some documents that we didn't have or
14 review that we need to ask about. But maybe there won't be, I
15 don't know.

16 **MS. BLUNSCHI:** We have offered two dates for
17 Mr. Friedberg next week. He's -- he has a difficult travel
18 schedule this week, but we did offer two dates for next week.

19 **THE COURT:** Okay. So take one of them.

20 **MR. PERLSON:** Understood, your Honor.

21 **THE COURT:** Okay. All right.

22 And I think some of the other depositions, that you wanted to
23 re-take those, I could see that we can wait and address when I
24 return. That seems -- that makes sense. We don't want to do
25 him a third time.

1 Is everyone in agreement with that?

2 **MR. GONZALEZ:** That's fine, your Honor.

3 **THE COURT:** Okay. All right.

4 Is there anything else then we should discuss?

5 **MR. GONZALEZ:** Have a safe trip.

6 **THE COURT:** Thank you.

7 **MS. BLUNSCHI:** I guess the only -- we have the review
8 of the native devices on hold.

9 **THE COURT:** Oh, yes. Right. So what do you want to
10 do with that? The review of the native?

11 **MR. PERLSON:** We'll get our people in there to look
12 at them and take them.

13 **THE COURT:** But when? So you already have -- you
14 have the documents at Uber.

15 **MR. PERLSON:** Right.

16 **THE COURT:** I mean, at MoFo, that no one is there
17 looking at, right?

18 **MR. PERLSON:** They are there looking.

19 **THE COURT:** I thought they were at Stroz.

20 **MR. GONZALEZ:** No.

21 **THE COURT:** What about the documents Mr. Gonzalez was
22 talking about that Mr. Judah looked at, right?

23 **MR. PERLSON:** Oh, those documents. Understood.

24 **THE COURT:** So I --

25 **MR. PERLSON:** Those aren't the native devices.

1 **THE COURT:** No, no, no. I understand. I'm just
2 trying to figure out. The issue with the native devices was
3 the privacy, right?

4 **MS. BLUNSCHI:** Yes.

5 **THE COURT:** This is what I want you to do. I want
6 you to review the relativity first. I want you to review that.

7 I want you to take Mr. Friedberg's deposition, and then I
8 want you to give me a -- and it may not be hard to do, but some
9 inkling why you have reason to believe what's on those native
10 is different from there. That's all. Just something. And I
11 just don't think you can do that until you've done these other
12 things first.

13 **MR. PERLSON:** Understood, your Honor.

14 **THE COURT:** All right. But they are there and they
15 are ready to go.

16 **MS. BLUNSCHI:** It will probably take about 24 hours
17 to get that set up in the review room, to have the native
18 devices, you know, brought in, plugged in, things like that,
19 but that can obviously be done.

20 **THE COURT:** All right.

21 Mr. Ehrlich?

22 **MR. EHRLICH:** Just on the issue of the native
23 devices. It's not just a privacy issue. It has all the
24 privileged documents.

25 **THE COURT:** I know. And part of that is just going

1 to be why it's happening now with the relativity and some stuff
2 is just going to have to be clawed back. It just -- it is what
3 it is.

4 **MR. EHRLICH:** Understood.

5 **THE COURT:** All right. And those other devices are
6 being imaged now, correct?

7 **MS. BLUNSCHI:** The additional hundred that were not
8 part of the review are being imaged.

9 **THE COURT:** Okay.

10 **MS. BLUNSCHI:** We would presume that those would
11 probably follow, obviously, the native devices that are ready.

12 **MR. EHRLICH:** And to the extent they weren't part of
13 the Stroz review, it is hard to understand how in this case
14 it's relevant to claims of what MoFo or Uber --

15 **THE COURT:** That Uber, maybe. But Otto Trucking is
16 also a defendant, right?

17 **MR. EHRLICH:** Yes. So --

18 **THE COURT:** And Otto Trucking is essentially
19 Mr. Levandowski.

20 **MR. EHRLICH:** Well, I'll let their counsel speak to
21 that, but he's certainly an important part of it.

22 But perhaps if they can make a showing of relevance there,
23 it would justify the extraordinary amount of time that it would
24 take to review 100 native devices, particularly if we have to
25 be there to monitor --

1 **THE COURT:** You don't have to. You choose to.

2 **MR. EHRLICH:** Correct.

3 **THE COURT:** You choose to. It's not an order.

4 **MR. EHRLICH:** Not an order. Understood.

5 **THE COURT:** Well, you know, I've also talked to Judge
6 Alsup about this as well, so that's where I'm speaking from in
7 part.

8 So I think should Waymo decide that's where they want to
9 spend their time, and they'll have -- may have to make some
10 decisions, then we'll -- you know, that may be how we address
11 it, is that you are there.

12 **MR. EHRLICH:** Okay.

13 **MR. PERLSON:** And in terms of the privilege, as we
14 talked about before, that's -- you know, we're going to see the
15 log and look at it and there may be further issues on that.

16 **THE COURT:** Well, you've seen the log. You got the
17 log on Thursday, correct?

18 **MR. PERLSON:** Yeah.

19 **THE COURT:** Yeah. So --

20 **MR. EHRLICH:** And an electronic version was sent
21 afterwards.

22 **THE COURT:** So have somebody else looking at that and
23 meeting and conferring with Mr. Ehrlich now as to why if there
24 is something that you think -- maybe if there is a more general
25 objection -- well, maybe we should tee this up now.

1 If Waymo is going to take the position that they've
2 waived -- thank you for bringing it up.

3 **MR. PERLSON:** That's what I meant.

4 **THE COURT:** ...that they have waived the privilege by
5 having disclosed it to Stroz, then let's set a briefing -- then
6 I want -- let's have that briefed and ready, fully briefed by
7 Tuesday. Not tomorrow.

8 **MR. EHRLICH:** Okay.

9 **MR. PERLSON:** That's fine. Yeah. We will definitely
10 put a brief in that timeframe.

11 **THE COURT:** Work with Mr. Cooper, who is returning
12 later today.

13 **MR. PERLSON:** You want that fully briefed by then.
14 That's perfect.

15 **THE COURT:** Fully briefed.

16 **MR. EHRLICH:** Which is when you are returning?

17 **THE COURT:** I'm returning on Tuesday. Something to
18 look forward to.

19 **MR. EHRLICH:** We will make it worth it.

20 **THE COURT:** So work with Mr. Cooper, or his colleague
21 here, to have that fully briefed in whatever form the parties
22 agree to on Tuesday.

23 And, of course, I will give Mr. Burnette and Mr. Segren?

24 **MS. BLUNSCHI:** Sebern.

25 **THE COURT:** Sebern, Mr. Ron, along with

1 Mr. Levandowski, because I assume -- did they all turn
2 privilege logs in to you as well?

3 **MR. PERLSON:** We have logs for most of them. I don't
4 think we have them for all of them.

5 **THE COURT:** Okay. Well, whoever has asserted
6 privilege as to some things, I'll let you be heard on that
7 motion as well. Okay, good. Thank you for bringing that up.

8 Anything else we should we should set up?

9 **THE REPORTER:** Counsel, your name, please.

10 **MR. PATCHEN:** Jonathan Patchen on behalf of Mr. Ron.
11 Your Honor had ordered that Mr. Ron's deposition also take
12 place after the Federal Circuit's ruling. And I just didn't
13 know when your Honor wanted --

14 **THE COURT:** No. So that's -- but he's already been
15 deposed.

16 **MR. PATCHEN:** He has been deposed once.

17 **THE COURT:** Let's wait and address that when we get
18 back because I want to avoid, if we can, three depositions.

19 **MR. PATCHEN:** I would as well, your Honor. I just
20 wanted to make sure we had guidance. Thank you.

21 **THE COURT:** That order is vacated.

22 All right. Great. Thank you.

23 (Proceedings adjourned.)
24
25

CERTIFICATE OF OFFICIAL REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Monday, September 18, 2017